

Serial No. 10/658,046
Amdt. dated April 1, 2005
Reply to Office Action of January 11, 2005

Attorney Docket No. PF01874NA C01

REMARKS/ARGUMENTS

Claims 9 through 11, 14 through 22 and 24 remain in this application. Claim 13 has been canceled without prejudice or disclaimer, and claims 9, 22 and 24 have been amended.

Claims 9, 22 and 24 are rejected under 35 U.S.C. §112, first paragraph. In particular, the above Office Action states "[a]pplicant has not claimed how the information which is transmitted to the receiver is received in to the wireless electronic wireless lock box which is critical or essential to the practice of the invention, but not included in the claim(s)".

Applicants respectfully traverse the Examiners rejection of claims 9, 22 and 24 under 35 U.S.C. §112, first paragraph. First, it should be noted that receiving information at the electronic lock box is not critical or essential to the practice of the invention. For at least one embodiment in accordance with the present invention, the electronic lock box may operate as a one-way transmitter of information. Second, "how" the information is received at the electronic lock box is not critical or essential to the practice of the invention. As shown in FIG. 2 and described at pages 8 through 10 of the specification, the type of information transmitted and received by the electronic lock box and actions causing transmissions and receptions are essential to the practice of the invention, but conventional mechanisms are used to receive the information at the electronic lock box. Therefore, reconsideration and withdrawal of the 35 U.S.C. §112, first paragraph, rejection of claims 9, 22 and 24 are respectfully requested.

Claims 9, 22 and 24 are rejected under 35 U.S.C. §112, second paragraph. In particular, the above Office Action states "... it is not clearly claimed whether the electronic lock box is a

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unit holding the information, or , it is a bridge to acquire the information from a central site and transmit to the receiver." The electronic lock box stores information in memory 40, shown in FIG. 2 and described at page 8, lines 17 through 29, of the specification. The electronic lock box may received information via the receiver 36 (see page 9, lines 24 through 28), and/or the I/O 44 (see page 9, lines 2 and 3). Thus, the specification clearly states that the electronic lock box may hold the information and may acquire the information from a remote device. In view of the above, reconsideration and withdrawal of the 35 U.S.C. §112, second paragraph, rejection of claims 9, 22 and 24 are respectfully requested.

Claims 9 through 11, 14 through 22 and 24 are rejected under 35 U.S.C. §103(a) as being unpatentably over U.S. Patent No. 4,766,746 to Henderson, et al. ("Henderson, et al. patent") in view of U.S. Patent No. 5,791,172 to Deighton, et al. ("Deighton, et al. patent") and U.S. Patent No. 5,793,882 to Piatek, et al. ("Piatek, et al. patent").

The limitations of canceled claim 13 have been added to independent claims 9, 22 and 24. Claims 1, 22 and 24 as amended provide, *inter alia*, an electronic lock box that wirelessly communicates information about the real estate property, including at least one of the group comprising a price of the real estate property, a square footage of the real estate property, a virtual tour of the real estate property, a number of bedrooms within the real estate property and an availability of the real estate property, and claims 22 and 24 as amended provide, *inter alia*, similar language.

Page 5, lines 3 through 11, of the above Office Action admits that the Henderson, et al. patent, the Deighton, et al. patent, and the Piatek, et al. patent do not teach information about the

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real estate property including at least one of the group comprising a price of the real estate property, a square footage of the real estate property, a virtual tour of the real estate property, a number of bedrooms within the real estate property and an availability of the real estate property. The above Office Action further states official notice is taken that it would have been obvious to one of ordinary skill in the art at the time the invention was made that it is a business choice to elect what information needs to be transmitted to the receiver to meet business requirements.

Applicants traverse the Examiner's assertion of official notice and requests documentary evidence pursuant to 37 C.F.R. §1.104(c)(2) if the rejection is to be maintained. "[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test. See *Zurko*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). The type of information about the real estate property wirelessly broadcast from the electronic lock box, namely information that may be utilized for real estate transactions, is significant for at least two reasons. One, the type of information about the real estate property affects the way in which the information may be utilized. A price of the real estate property, a square footage of the real estate property, a virtual tour of the real estate property, a number of bedrooms within the real estate property and/or an availability of the real estate property are types of information utilized for real estate transactions. In contrast, the Piateck, et al. patent describes a system and method that communicates property information for emergency situations, and the Henderson, et al. and Deighton, et al. patents do not describe any type of communication of property information.

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Two, the type of information about the real estate property determines the intended audience for receiving the information. A price of the real estate property, a square footage of the real estate property, a virtual tour of the real estate property, a number of bedrooms within the real estate property and/or an availability of the real estate property are types of information directed to potential buyers or buyer's agents having an interest in purchasing/leasing the real estate property. In contrast, the Piatek, et al. patent describes a system and method that communicates property information to incident commanders, firefighters and medical personnel, the Deighton, et al. patent describes a system that communicates acknowledgments to control commands from an infrared remote control, and the Henderson, et al. patent describes a system that provides information to personnel who control/supervise operation of the lock box. Thus, it would not have been obvious to one of ordinary skill in the art at the time the invention was made to combine the cited patents in the manner suggested by the above Office Action. Therefore, claims 9, 22 and 24 distinguish patentably from the Henderson, et al. patent, the Deighton, et al. patent, the Piatek, et al. patent, and any combination of these patents.

Claims 10, 11 and 14 through 21 depend from and include all limitations of independent claim 9 as amended. Therefore, claims 10, 11 and 14 through 21 distinguish patentably from the Henderson, et al. patent, the Deighton, et al. patent, the Piatek, et al. patent, and any combination of these patents for the reasons stated above for independent claim 9.

In view of the above, reconsideration and withdrawal of the 35 U.S.C. §103(a) rejection of claims 9 through 11, 14 through 22 and 24 are respectfully requested.

CONCLUSION

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No amendment made was related to the statutory requirements of patentability unless expressly stated herein. Also, no amendment made was for the purpose of narrowing the scope of any claim, unless Applicants have argued herein that such amendment was made to distinguish over a particular reference or combination of references.

The Commissioner is hereby authorized to deduct any additional fees arising as a result of this response, including any fees for Extensions of Time, or any other communication from or to credit any overpayments to Deposit Account No. 50-2117.

It is submitted that the claims clearly define the invention, are supported by the specification and drawings, and are in a condition for allowance. Applicants respectfully request that a timely Notice of Allowance be issued in this case. Should the Examiner have any questions or concerns that may expedite prosecution of the present application, the Examiner is encouraged to telephone the undersigned.

Respectfully submitted,
Muncaster, George, et al.



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